

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**KENNETH WILLIAMS,**

Petitioner,

v.

**CIVIL ACTION NO. 3:06-CV-121  
(BAILEY)**

**JOE DRIVER,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

**Introduction**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of proposed report and a recommendation ["R & R"]. Magistrate Judge Seibert filed his R & R on November 9, 2006 [Doc. 5]. In that filing, the magistrate judge recommended that this Court deny the petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and to dismiss the case from the Court's docket.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1);

**Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984).

Here, objections to Magistrate Judge Seibert's R & R were filed November 27, 2006 [Doc. 9]. Accordingly, this Court will conduct a *de novo* review only as to the portions of the Report and Recommendation to which the petitioner objected. The remaining portions of the R & R to which the petitioner did not object will be reviewed for clear error.

The petitioner initiated this case on November 6, 2006, by filing a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. On November 9, 2006, the magistrate judge issued his R & R, recommending that the petition be summarily dismissed because it attacks the validity of the petitioner's sentence rather than the means of execution and fails to show that the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to test the legality of the petitioner's detention. In addition, the magistrate judge determined that the petitioner is not entitled to relief pursuant to the Supreme Court's decision in **United States v. Booker**, 543 U.S. 220 (2005), as **Booker** is not retroactive to cases on collateral review. The magistrate judge also found that the petitioner's double jeopardy argument with regard to his term of supervised release is without merit.

As a result, it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation** [Doc. 5] should be, and is, hereby **ORDERED ADOPTED**.

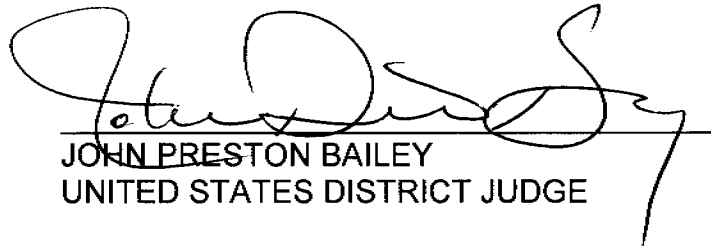
#### **Conclusion**

The Court adopts the recommendations of Magistrate Judge Seibert. Accordingly, the Court hereby **DENIES** the petitioner's application under 28 U.S.C. § 2241 and **DISMISSES with prejudice** this matter from the Court's docket.

The Clerk is directed to transmit a copy of this Order to all counsel of record and the

*pro se* petitioner.

**DATED:** June 19, 2007.



JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE